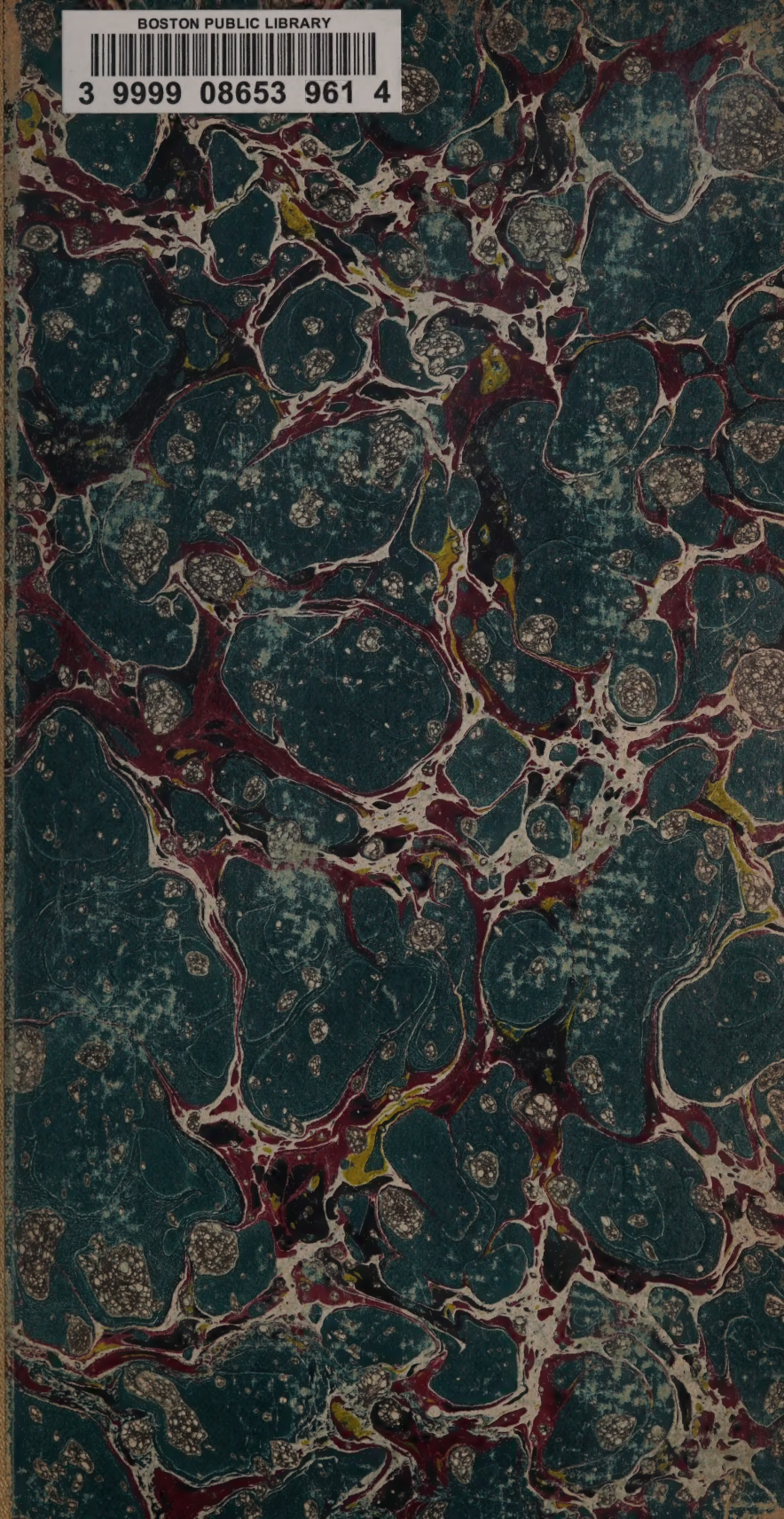


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AN EXAMINATION
OF
THE LICENSE LAW
OF THE
Commonwealth of Massachusetts.

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"LICENSED HOUSES."

AN EXAMINATION

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First published in the Boston Courier, Dec. 1832.

BY M. L. V.

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PREFACE.



INTEMPERANCE will undoubtedly continue to pour forth upon the world its annual issues of misery and crime, disease and death, in defiance of the very best laws which a legislature can devise ; until the executive officer is sustained in the enforcement of those laws, by the popular opinion, the moral sense of the community.

This is unquestionably true. But, does it follow from this that a legislature should accommodate its laws, upon this all-important subject, to the wasting and waning morality of any age or nation ? Assuredly not. If the legislature of a commonwealth will not lift a finger in the cause of temperance, it should, at least, stand neutral, in this great cause of humanity, in which fifteen hundred thousand respectable citizens are arrayed on the one hand, and a phalanx of drunkards and drunkard-makers, on the other : it ill becomes the legislative assembly of any one of the New England States to throw its palladium over the shoulders of iniquity.—We invite the calm and impartial, to an examination of the license law of the Commonwealth of Massachusetts.

LICENSED HOUSES.

NUMBER I.

THERE are minds so constituted as to be bullet-proof against the powers of reason, when excited by a suspicion of selfish motive, however slight, against the statesman, the preacher, or the essayist ; as though the very best reason were unable to rest upon its own support. It is, of course, our wish to persuade ; and we are unwilling to diminish the humble measure of our power, whatever it may be, by a suspicion of any improper motives in relation to the subject of discussion. We believe those motives to be single and upright ; we belong not to the “ *self-styled temperance party*.” The society has our entire respect, but it happens that we are not among its members. In this city we have been reared ; here we were born ; here are the ashes of our ancestors ; and here, we have no doubt, our children will rise into life ; and themselves, in God’s good time, be gathered to their fathers. We stand, in various relations of an interesting character, which make it desirable to preserve the purity of the moral atmosphere, for our own enjoyment, and that of our descendants. There are higher and holier considerations for this object, which ought to exist in every bosom.—We have no private or personal motives for this discussion. We have nothing to buy or to sell, the price of which is likely to be advanced by the exclusion of ardent spirit ; excepting it be true, and most probably it is, that real property, in which we have a little interest, is likely to be worth more, in a city of steady habits, than in a tippling community. We have no other motive than a sincere desire to contribute to the public good.

Upon the very threshold, we have been half inclined to hesitate, and inquire, *Cui bono?* Who is likely to be benefited by any lucubrations of ours, on a subject which has attracted the attention, and employed the powers of eminent physicians, civilians, and divines? A great moral nuisance is not easily abated, when various and complicated interests are allied for its support. We have hitherto conceived it to be far more important for the advocates of temperance to aim at the hearts, rather than at the heads of their opponents. The effects of intemperance are sufficiently understood; and the influence of dram-shops in producing these effects can never be mistaken. It surely cannot be necessary to linger here, for the demonstration of these simple positions. The reports of temperance societies, year after year, are setting the whole matter before the world in every possible variety of form, and proving to mankind, that the fairest issues of intemperance, are degradation, and disease, and beggary, and death. The *voluntarius dæmon*, as the drunkard is styled by Sir Edward Coke, may be found of every age and sex, and of every rank in society. Our prisons and our houses of correction are the customary stopping places of many, on their journey to the grave, and first, in some cases, to the gallows. It is stated, in the appendix to a report of a committee of the Massachusetts Society for the Suppression of Intemperance, June 3, 1831, that between June, 1823, and July, 1829, three thousand and thirty-four persons were committed, by the Boston Police Court alone, to the House of Correction, of whom **FOURTEEN HUNDRED AND EIGHTY-FOUR** were common drunkards! And it is fair to infer, that the remainder, who were committed as lascivious persons and vagabonds, were not remarkable for temperance. And, at whose hands, did this *elite* of misery receive the means of their destruction? At the hands of the vendors of spirituous liquors; the *dram-selling party*, who are so tenacious of their inalienable rights to live by the death of others; those ministers of a modern Juggernaut, whose daily sacrifice is human flesh. We cannot sufficiently retain in our memories the names and local habitations of a numerous corps; and we very naturally inquire what is their number? In the year 1830, alone, the number of licenses, granted by the Mayor and Aldermen, in the city of Boston, was **SIX HUNDRED AND NINETY**. The statute for the regu-

lation of licensed houses, to which we propose to invite the public attention, and which is now the law of the commonwealth, was not then in existence ; but the rule of conduct for the Mayor and Aldermen, in this matter of license, was the same, *mutatis mutandis*, which had been the rule of conduct, for the selectmen, under the former statutes. The *approval* of a petitioner, by the selectmen, had been immemorially a *sine qua non*, and the Court of Sessions could grant no license without it. The very nature of the recommendation, required of the selectmen, implied that the legislature expected them to institute a careful and particular inquiry into the character and qualifications of the candidate ; he could not be licensed unless the selectmen recommended him “ as a person of *sober life and conversation*, and suitably qualified and provided for that employment, and attached to the constitution and laws.” With all this, the petitioner was by no means certain of a favorable reception before the Court of Sessions ; for the law explicitly provided that the Justices of that Court “ *should not* license more persons in any town to keep houses of common entertainment, or to retail spirituous liquors *than they shall judge necessary*, for the receiving and refreshment of travellers and strangers, and to serve the public occasions of such town, or are *necessary for the public good*.” Such were the requirements of the statutes of 1787, and the additional acts which were in force, until March, 1832. Until December, 1816, licenses were granted to tavern-keepers and retailers, and to no other description of persons. In the acts of parliament, colony laws, and statutes of the commonwealth, tavern-keepers are variously denominated taverners, innholders, and common victualers—these words meaning one and the same thing. Until December, 1816, all taverners, innkeepers, and common victualers, were “ at all times to be furnished with suitable *provisions* and *lodgings*, for the refreshment and entertainment of *strangers* and *travellers*, pasturing and stable room, hay and provender (saving that in populous sea-port towns, stable room, hay and provender only are required) for their horses and cattle, under penalty of being deprived of their license.” In December, 1816, an act was passed, applicable to the town of Boston alone, of which act it is not easy to speak as it deserves. Its provisions are diametrically opposite to all the accumulated wisdom, and to all the statutes, and to all the moral and religious

feeling which had been brought to bear upon a subject of the first importance, for nearly two hundred years ! The most valuable restraints and obligations, which had been imposed by the wise and good, from year to year, since the first landing at Plymouth, were hacked away, by the hatchet of the legislature, at a single blow ! The very anniversary month appears to have been selected for this praiseworthy achievement. Hence arose a race unknown before, a "*nova progenies monstrosa*," for which it would have puzzled the framers of heathen Mythology to furnish a parallel. Minerva sprang, fully developed, from the head of Jupiter. We know not whose head was in labor, when this monster was *accouched*. Will any man come forth and calmly survey the evil, which has been brought upon our city and upon mankind, and claim this creation as his own ? Let us pause upon the facts, and see, if they will not sustain us, in the employment of exemplary severity of language. The statute of 1816 provides for granting licenses to *common victualers*, *eo nomine*, who are *not* required to furnish lodgings for travellers, or hay and provender for horses and cattle. It must be obvious, at once, that a common victualer, before December, 1816, was a very different creature of the law from the common victualer at present. He was, in the first place, always a householder ; he was required to be in a constant state of preparation for the reception of guests, their horses and cattle ; and he was liable to the visits, not only of the most obscure, but occasionally of the most respectable, who might assemble at the inn, as members of committees, or for other purposes of business. Hence it follows, in the first place, that the amount of funds required for the least considerable of such establishments, and the common difficulties and losses, to be incurred in a change of business, rendered the undertaking absolutely impossible for *men without means*, and a subject of careful deliberation with all : in the second place, as his premises were not only liable but likely to be visited by men of all grades, characters, and professions, he was somewhat in the condition of the innkeeper of Saragossa, who never failed to dream of the *Alguazil*. An innkeeper, a common victualer, was a man of responsibility, "*of sober life and conversation*," and frequently in the commission of the peace, and capable, upon an emergency, of laying down the taverner, and assuming the magistrate. The management of liquid fire was then

entrusted to infinitely fewer and far more careful hands. What have been the effects of this important change? We are not now in the place of those who prognosticate and predict: sixteen years have passed, since the admonitory voices of intelligent and honest men were lifted in the halls of legislation, in opposition to this measure. It is for the present age to proclaim the results. We have stated, that in the year 1830, six hundred and ninety licenses were granted by the Mayor and Aldermen. We beg you to contemplate their distribution: seventy-two were granted to innholders or taverners; twenty-two to retailers; four to confectioners; and to this novel order, under the ancient name of *common victuallers*, FIVE HUNDRED AND NINETY-FOUR! Perhaps this is a great blessing to the community, whose beneficial operations we are unable, with our finite powers, to comprehend. Tribute, to whom tribute is due; if so, the powers that were are entitled to all the praise. But, if we are right in our position, that an altogether unnecessary number of licenses are annually granted in the city, and the effects are such as we believe them to be, the *Mayor and Aldermen alone* are responsible. They are legally constituted the depositaries, in this particular, *of all the power*, and of all the discretion of the people. We shall endeavor to furnish chapter and verse for the statements and opinions which we have directly or indirectly advanced. We are surprised to find, upon inquiry, how small a number of our citizens know any thing of the law, or the facts, connected with a matter of such infinite importance, as the *legalized diffusion of alcohol* in this metropolis.

NUMBER II.

THE act of December, 1816, was the *magna charta* of all the "common victuallers," of the modern order, in the metropolis of New England. We inquire not if this act was the spontaneous

emanation of legislative wisdom, predicated upon a careful inquiry into the condition of society, and judiciously adapted to its occasions. Its origin and progress are well understood. We know it was *procured* by special influence ; and we are satisfied, that, if the predictions of its opponents, which have been sadly verified, could have been credited at the time, this statute would not have obtained a passage ; and the standing army of dram-sellers, who are quite “ a *party* ” among us, at present, would never have been legislated into being. The opposition of intelligent and independent citizens, from various sections of the State, was not wanting, to the passage of this law ; but the *spirit of New England* prevailed.

Not at all embarrassed by the requirements of former laws, to provide lodgings for travellers, and stabling for horses and cattle, the “ common victualler ” can go into business with a stock and stand which might be included in the capacious hen-coop or smoke-house of an old-fashioned taverner. Were it not, that the law requires the *common victualer* to be stationary, we should recommend to some of this valuable class of citizens, who deal snugly, to establish themselves in hand-carts or tumbrels. The business of some of these men “ *of sober lives and conversations,* ” who are “ *firmly attached to the laws and constitution,* ” and whom the Mayor and Aldermen have licensed “ *for the public good,* ” could be conducted with a tolerable share of comfort, in a large-sized tub. Others may be found in shops of the smallest dimensions, not on terra firma, but sustained on beams projecting over the docks. We speak now of those who conduct their operations above ground. There are not a few who are located in subterraneous recesses, where many a tippler, in the earlier stages of his evil habit, dives for a dram, who has yet enough of shame to keep him from an open application at the public inn. It cannot be said of this abomination, that it is not done in a corner : there is not a corner of the city, in which a citizen may be sure to escape from the disgusting exhibition of its effects ; and if there were, a license to fill the vacancy would be applied for in less than twenty-four hours. Licenses for vending ardent spirits are not less numerous in the city than they were in 1830. They were then six hundred and ninety ; they cannot be less, at present, than seven hundred. If one half of the whole population were in habits of intemperance, among the tip-

pling moiety of 30,000, there would be one dram-seller to about forty-two dram-drinkers! It is not easy to place the absurdity and perilous folly of the existing system in a more imposing light. Even the reckless cupidity of those very individuals, whose importunity procured the passage of the law of 1816, would have prompted them in vain, could the lawgivers of that date have foreseen the blessed effects of their hasty legislation. The records of the past were before them. A retrospective glance at the cautious proceedings of their predecessors should have taught them to pause and reflect, before they ventured to tamper with a subject of such infinite importance. They well knew that the existing checks and restrictions of the law were insufficient, under the best possible management, for the entire suppression of intemperance. And what did they do to improve the condition of society, in this important particular? What new preventives did they employ? What measures of wisdom did they adopt, to supply the deficiency of former legislation? The community was already oppressed with a heavy load; the legislature laid on relief in the form of an accumulated burthen. Every good and sober citizen was deeply pained when he beheld, in the town of Boston, from fifty to an hundred shops and taverns for the sale of ardent spirits; the delegates from all the towns in the commonwealth put their heads together, and opened the way for the introduction of six hundred more! We are thus far speaking with a particular reference to the law of 1816. The framers of that law affected to rely on the sound discretion and the patriarchal regard of the selectmen for the welfare of their particular communities, and especially upon the positive injunction of existing laws, requiring the Court of Sessions *not* to license beyond the limit of the *public good*. What did they imagine the thirsty generation of the metropolis would care for the selectmen and the Court of Sessions, when they had found a perfect acquiescence in their wishes, and obtained a sanction for their measures from the united power and wisdom of the State? It was well understood by the *dram-selling party, their patrons and adherents*, that the legislature was on their side. The popular sense was in their favor. It was a vote! No selectmen, who have been willing to be put in, have ever been willing to be put out; and, as they were selected for their prudence, and management, and forecast, they, very naturally, respected the will

of the legislature, "*as they understood it.*" It happened, in a remarkable manner, that applicants for recommendations were almost invariably "*men of sober lives and conversations,*" and "*firmly attached to the laws,*" especially to the law of February 14, 1816. The Justices of the Court of Sessions were equally discreet; they were not a rash body of men, who were going to tilt against the legislature, and the selectmen, and such a regiment of citizens, "*firmly attached to the constitution and laws.*" It is highly probable that the fathers of the town have acted upon a refined principle of wisdom; for the effects of intemperance are not likely to be very injurious, after all, in a city, so entirely certain of being saved, not by the presence of one righteous man, but of seven hundred men of "*sober lives and conversations.*"

It would be a very refreshing consideration, if the existing system of things were simply ridiculous and absurd. It is a system singularly disgraceful to the city; injurious to the health and habits of our citizens; destructive of the public morals; exceedingly burthensome to the community, in the accumulation of paupers; promotive of crime; productive of the deepest anguish, in the most interesting relations of life; in a word, it is the rail-way to temporal and eternal destruction. And what, for this tremendous aggregate of ill, is the counterpoising good? Nothing—less than nothing—the dust of the balance. A New England man should spurn the petty gains of a traffic in broken constitutions and broken hearts, as he would turn with disgust from the emoluments of slavery.

Before we go farther forward, let us turn over the legislation of our worthy ancestors upon this important subject.

NUMBER III.

AN impartial comparison of ancient and modern legislation, on any subject, involving the matter of public morals, compels us to yield to our venerable ancestors the palm of superior wisdom, and a higher, holier, and more single-hearted regard for the real interests of mankind. They knew nothing of steam-boats and steam-coaches, nor of Mr. Babbage's machine, nor of rail-roads, nor of locomotive engines, travelling at the rate of forty miles an hour; but, in the preparation of laws for the preservation of the public morals, they are worthy of our imitation and respect. On such an occasion, it may be profitable for us, not less than for a painter, to study the masters of an earlier school. How much additional good the community has received by the substitution of the statute of March, 1832, for all the wisdom upon this important subject, which had been accumulating in the statute books for several generations, the intelligent reader will decide. We purpose, by a simple exposition and comparative analysis, to spare him the labor of a tedious investigation for himself.

The statute of March, 1832, substantially re-enacts the pernicious law of December, 1816. Some of its novel provisions are also eminently dangerous to the cause of public morals; and, as it omits entirely several checks upon the progress of intemperance, which are highly valuable in themselves, and had been handed down for several generations, in a series of statutes, all which are abrogated by the repealing section of this law, it has placed the community in a much worse condition than before. This curious law is an act of the legislature of Massachusetts: so is that law which forbids citizens to "*offer for sale*" any "*lighted squib, cracker or rocket.*" "*Non omnino dormitat bonus Homerus.*" The legislature, not less than a private individual, may perpetrate egregious mistakes; especially when it suffers itself to be precipitated into any act, by any "*party,*" though composed of men of the most "*sober lives and conversations.*" It is an ancient maxim never to *hurry an apothecary*; and surely it may well apply to the legislature of a State, whether its energies are called

into action to nullify the laws of an empire, or the morals of a single city! If this statute is really as imperfect and as full of mischief as we think it will be made to appear, it is no great matter for wonder—the legislature was in a hurry, and the people were impatient for their *rum*. Can any thing be imagined more prodigiously wicked and absurd than the exertion of party influence to obtain the passage of a law for selfish ends; which law is productive, to the members of the party, of private emolument, but at an incalculable sacrifice of the public morals? Such we propose to prove the existing law to be. In accordance with a suggestion at the close of the preceding number, let us take a cursory glance at some of the statutes which it annuls, that we may have some idea of the feelings and opinions of our forefathers, on a matter of the very first importance to the happiness and prosperity of a community. They legislated, not with a view to the profits of a *dram-selling party*, but with a single eye to the public good. They considered drunkenness as an abominable sin, and the prolific mother of a thousand crimes. They contemplated its effects, not with a cold-blooded, calculating spirit, confined to the present world, but they elevated their views to its consequences in another. The statute of February, 1680, which is by no means the earliest of the Colony laws upon this subject, commences with the following preamble:—“*Forasmuch as drunkenness is a vice to be abhorred of all nations, especially of those who hold out and profess the Gospel of Jesus Christ; and seeing any strict law will not prevail, unless the cause be taken away; it is therefore ordered by this Court, first, that no merchant, cooper, nor any other person whatsoever, shall, after the first day of the first month, sell any wine under a quarter cask; neither by quart, gallon, or any other measure; but only such taverners as are licensed by the Court to retail wines,*” &c. Wine appears to have been the comprehensive word for the designation of ardent spirit, as it is the word employed throughout the act; though “*strong waters*” and “*rum*” are used incidentally in the statute. The wisdom of our ancestors is nowhere more apparent in this excellent statute, than in the suggestion, that “*any strict law will not prevail unless the cause be taken away.*” But we, on the contrary, have multiplied the cause many hundred fold, by the statute of 1816; and, while the very best of us are taught to pray, that we may not be led into temptation, we

are spreading, under sanction of the law, irresistible allurements for the uneducated, undisciplined, and irresolute, in every nook and corner of the city. At the date of the colony law, the merits of every application were decided by a reference to the General Court. This would be an intolerable burthen, at present, with seven or eight hundred applications for original and continued licenses per annum, were it not that they appear to be granted without any great expense of time or thought, and *as a mere matter of course*. We have no doubt, that the burthen was greater when the representatives of the people licensed "*no more than the public good required*," and gave their grave attention to the only question in hand, *the public necessity*, and not the will of an inconsiderate and mercenary party.

The seventh section of this statute of 1680 contains some very sensible provisions, which do not appear to have been retained, even in the act of 1787. "*Nor shall any merchant, cooper, or keeper of wines, or other persons that have them in custody, suffer any person to drink to excess*," &c. "*Nor shall any person licensed to sell strong waters, or any private housekeeper permit any person or persons to sit drinking or tippling strong waters, wine, or strong beer, in their houses*," &c. In the act of 1787 there is a similar provision, but in relation to *licensed* persons only. The provision now quoted from the colony law embraces the case of *all* persons who get others drunk, gratuitously or otherwise; who, upon public rejoicings, at weddings, or wakes, or on other occasions, encourage intemperance in others; and, indeed, to every genteel and vulgar entertainer, "*who keeps it up*," till his company are getting drunk. The entertainer may be a very popular man, and have wit enough to keep himself quite sober, and manage his half-drunken "*clientes cum clavibus*," at the polls, with infinite adroitness; and, not being himself in liquor, remain irresponsible to all law of modern invention. Our ancestors were clearly a very simple race of men. The nineteenth section of the colony law, providing for the case of noted drunkards, commences as follows:—"Whereas, this Court hath made several laws and orders for the prevention of the sin of drunkenness, and mispending precious time and estate; and yet, notwithstanding, great complaint is made of several persons, spending their time and estate by drinking and tippling, in taverns and ale-houses, to the

great dishonor of God, and prejudice of their families," &c. This statute was passed one hundred and fifty-two years ago. It exhibits the religious and moral tone of the lawgivers, in the colony of Massachusetts Bay, sixty years after the landing at Plymouth. The twelfth section requires all taverners, victuallers, and ordinaries, within a mile of the meeting-house, in any town, where week-day lectures are held, to clear their houses, during the hours of service, of all persons able to go to meeting, saving strangers and travellers. It is to be remarked that the statute contains no similar provision, in respect to the Sabbath, though such a provision will be found in the province law of 1698. The omission to legislate on such a matter resembles the omission of the Athenians to provide a law against the crime of parricide, which never entered into their conceptions. This example of ancient legislation is introduced, not only as an evidence of the wisdom of our ancestors, but to show how very gravely they were disposed to treat a subject of such vital importance. The statute is full of excellent provisions for the advancement of the public good, imposing salutary restraints upon intemperance, and not cunningly contrived to satisfy the *cravings* of any party whatever.

NUMBER IV.

IN the tenth year of William III., 1698, another statute was passed in the colony, then province of the Massachusetts Bay, entitled "*an act for inspecting and suppressing of disorders in licensed houses, &c.*" This act contains many salutary provisions, among which is the following: "*And the better to prevent nurseries of vice and debauchery, it is further declared, that the justices of the general sessions of the peace, in each county respectively, be, and hereby are, directed not to license more persons, in any town or precinct, to keep houses for common entertainment, or to retail ale, beer, cyder, wine, or strong liquors, within or out of doors, than the*

justices shall judge necessary for the receiving and refreshment of travellers and strangers, and to serve the public occasions of such town or precinct; having regard to the law for the qualification and approbation of the persons so to be licensed; and all public houses shall be on or near the high streets, roads and places of great resort." This portion of the law of 1698 was not deemed by the lawgivers of 1787, like news on the stock exchange, good only while it was new, but was by them re-enacted, almost in the same phraseology, eighty-nine years after it first became a law. How much of all this has been permitted to remain, by the legislators of 1832, we shall be able to see, when we come to the examination of the existing law. Notwithstanding the operation of this statute of 1698, intemperance appears to have been gaining ground in the province, if we may judge from certain expressions, contained in a statute, enacted here in the twelfth year of Queen Anne, 1712, entitled "*an act against intemperance, immorality and profaneness, and for reformation of manners.*" In the preamble to this statute we have an exhibition of the simple truth, in the language of our fathers: "*Whereas the laws at several times established in the government of this, her Majesty's province of the Massachusetts Bay, and now in force, have made good and wholesome provision for the regulation of inns, &c. and retailers of strong liquors out of doors, and for preventing of tippling and drunkenness, declaring that such licensed houses ought to be improved to the right ends and uses for which they are designed, namely, for the receiving, refreshment and entertainment of travellers and strangers, and to serve the public occasions of the towns and places in which they are, and not to be nurseries of vice and debauchery, as is too frequently practised by some, to the hurt of many persons, by mispending their time and money in such houses, to the ruin of families,*" &c. Then follows a provision for reading the laws against drunkenness, &c. by the town clerk, in every town, at the anniversary meeting in March. It is perfectly easy for us of the present day to find a sufficient reason, for an exhortation, similar to that, contained in the following passage from this act of 1712: "*The selectmen and other principal well-disposed persons in each town, desirous of a reformation, are hereby exhorted and directed to countenance, accompany, assist, and join with the justices, sheriffs, tithingmen, constables, and other officers, in their endeavors to dis-*

cover and suppress all unlicensed houses, and vice, immorality and profaneness, and for reclaiming the over great number of licensed houses, many of which are chiefly used for revelling and tippling, and become nurseries of intemperance and debauchery, indulged by the masters or keepers of the same for the sake of gain. Be it enacted," &c. If the good citizens of 1712 experienced the evils of intemperance, in a degree to call for such forcible expressions of their sentiments, in their legislative capacity, when the old-fashioned taverner and the retailer were the only lawful engineers in this blessed work—will their descendants in 1832 sit patiently and uncomplainingly, year after year, under the present condition of things? It may be imagined that *unlicensed* establishments, for the sale of ardent spirits, furnished the principal cause of complaint in 1712, as they are particularly alluded to in the statute to which we have referred. In answer to any such suggestion, it may be sufficient to refer to a note, appended to an address, delivered before the Massachusetts Society for the Suppression of Intemperance, May, 1830, by the present Attorney General of the Commonwealth, in which he says, "*It is a safe calculation to assume, that there are more than three hundred persons in the city, habitually selling liquors without a license.*" If this be correct,—and no person had superior means of acquiring correct information on this subject than the gentleman to whom we refer, in his situation, as County Attorney,—our ancestors had no greater cause than ourselves for complaining, of the *illegal* as well as the *legal* diffusion of ardent spirit. In 1830, therefore, there were six hundred and ninety dram-sellers, great and small, in the city of Boston, established by law, and three hundred who had spared the Mayor and Aldermen that close application of their scrutinizing powers, which they commonly bestow on the qualifications of those gentlemen, who apply for diplomas to sell rum; making in all, an aggregate of NINE HUNDRED AND NINETY.

NUMBER V.

THE statute next in chronological order, which it is necessary to consider, is the act of the Commonwealth, passed February 28, 1787, entitled "*an act for the due regulation of licensed houses.*" This principal statute, with its several additional or supplemental acts, was the law of the State, for about five and forty years, or until March, 1832, when, as we have stated, the present statute was enacted. As we propose to examine the provisions of these statutes of 1787 and 1832, comparatively, we shall say nothing more of the leading statute of 1787 at present; but proceed to make a few observations upon the most obnoxious of its additional acts entitled, "*an act, in addition to an act, entitled an act for the due regulation of licensed houses,*" passed December 14, 1816. This enactment, as we have already stated, was intended to operate in the city of Boston alone; and the provision, granting a dispensation to dram-sellers from all obligation to provide lodgings for travellers, and provender for horses and cattle, had very much the effect of a successful motion to strike out the enacting clause of a statute: as far as it went, it neutralized the force of the important check, contained in that very obligation. Before the passage of this abominable law, it was absolutely impossible for a *chevalier d'industrie*, of the very worst order, to become the legal distributor of ardent spirits. A vile creature of this description, who had no pecuniary means, could obtain no credit, sufficient to enable him to establish himself, as a *tavern-keeper*, under the law of 1787, of the lowest order; but how many are there so hard-hearted, among the wholesale dealers, as to deny a plausible beggar a jug of rum, for an experiment! The question of character is settled; he has obtained his license; the Mayor and Aldermen have stamped him, with their sign manual, as a man of *sober life and conversation, and firmly attached to the constitution and laws*; in the spirit of all former laws upon this subject, they could not license him if he were not. This very individual may be a vagrant, sloughed off, like peccant matter, from the city of New York; himself a drunkard; a resident in this city but a few days; and trusted, as a

tenant of a small shop, on the recommendation, implied in the fact, that the Mayor and Aldermen of the city of Boston have granted him a license! Such is no imaginary case, but one within the knowledge of the writer. The evidence is at the service of the Mayor and Aldermen. But they were deceived by the *grave and respectable* names of those who recommended the candidate!

The act of 1816, was not only an act for the *due regulation* of licensed houses, but of all the licensed huts, hovels, and holes, in the town of Boston; for it was the Charter of all their worthy proprietors; and so far as it pretended to *regulate* their useful labors, they regarded it no more than they regarded the whistling of the wind. All persons, licensed to keep and sell gunpowder, are obliged to put up a notice of the fact, in front of their stores; and they do so, as we believe, without an exception. All persons who were licensed to sell drams, were required to signify their occupation, in a similar manner. Yet, notwithstanding the whole number of dram-sellers, under the name of common victuallers, amounted to five hundred and ninety-four in 1830, no person could have discovered more than a very small proportion of that number, if he had sought them out under the "*painted*" designations required by law. The third section of this act requires that every licensed person shall "*cause a sign to be fixed upon a conspicuous place on the front of his or her house, shop, or other place of business, with his or her name painted, and with the business of Innholder, Retailer, Common Victualler, or Confectioner, for which he or she shall have been licensed, thereon expressed.*" And it was explicitly provided, that the license should not protect, until this was done. Was it done by any but a very few? It was not. Were any prosecutions commenced? We should be pleased to find a solitary record. Yet this provision was, at least, as important as the provision for numbers on hackney coaches, if the magistrates ever intended to prosecute. But they did not intend to prosecute, and therefore the provision was practically insignificant. Yet it is not easy to conceive of a more useful provision, annexed to a more injurious law. If the omission to designate his business passed unnoticed, so might the omission to designate himself. It would, of course, become almost impossible to know, without a search of the records and proof of identi-

ty, who was licensed and who was not ; and the private citizen, upon whom the subaltern officers of the city, standing, or rather sleeping, in the place of the old-fashioned tythingmen, are apt to lean for information, deterred by the increased difficulties and perplexities of prosecution, would be inclined to pass on, and leave the evil, in the shibboleth of certain empirics in political economy, *to rectify itself*. But the *dram-distilling, dram-selling and dram-drinking party*, who had worked their way through the legislature of a State, had little to fear from the opposition of the officers of a town ; and any obstruction, thrown in their way by any one of those officers, would have laid the foundation of a vigorous and probably a successful opposition to his re-election. So it has been, and so it will be, until our worthy fellow-citizens shall collect their powers, and shake off that drowsy indifference to a subject of the very first importance,—and solemnly resolve, by an effort, costing nothing more than perseverance and unanimity, to wipe away the disgrace, and arrest the progress of that moral devastation, which has existed so long in our metropolis.

The subject of this discussion may be very uninteresting to a certain description of readers. To females it must be particularly so ; yet there are no members of the community, whose attention we more earnestly and respectfully solicit. By the zealous co-operation of their influence with ours, we may be able to remove the stain ; and our birth-place, the chief city of New-England, may be delivered from the operation of those causes, which are, at present, productive of such fatal effects. Bad laws are not likely to give place to better ; and good laws are not likely to be executed, in opposition to public sentiment. We appeal to the mothers, wives, and sisters, in this metropolis : we ask them to employ their influence with their sons, husbands and brothers, to use their utmost exertions for the free interchange of public opinion, and for the elevation of the standard of moral sense. Whenever it shall become *popular* to amend our bad laws and execute the good ones, it will be done, and not before.

NUMBER VI.

THE reasons for non-compliance with the requirements of the law of 1816, to set forth upon the front of the shop or store the business of innholder, retailer, common victualler, or confectioner, for which the occupant was licensed, were excellent *of their kind*. During the late war, the hopes of capturing a fine American prize were frequently blasted by the unexpected production of a British license; so, when Paddy Mullony or Patrick O'Donnohue were caught at last, and dragged out of their dram-kennels in Broadstreet, and brought before the Court, for selling drams on the Sabbath, which a Common Victualler cannot lawfully do; the complaints could not be sustained, because these two gentlemen of *sober lives and conversations* had been sailing, all the while, under licenses as *Innholders, who have a right to sell drams on the Sabbath*. The above names are as fanciful as that of Dermot MacMorrogh; but cases of this identical character have repeatedly occurred. No retrospective evidence could well be procured to prove that the parties, complained of, were not "*suitably provided*" with lodgings and provender, required of every *Innholder*, under penalty of losing his license; for nobody had thought of applying for lodgings for himself, or accommodations for his horses or cattle, at a palpable grog-shop, not much bigger than a hen-coop. Neither had the dram-seller committed himself, by putting up any particular designation of his business. The omission, to be sure, was a breach of the law; but the Mayor and Aldermen did not feel themselves justified, by popular opinion, in doing their duty in the premises; and the informer, disappointed and disgusted, thought proper to turn away from the disagreeable pursuit. Yet, in these cases, the licenses had been granted, obviously without any sufficient investigation of the character or condition of the party licensed.

But there were other reasons for declining to comply with this requirement of the law. There is less difference between a sailor and a marine, than between a Common Victualler and a Grocer: nevertheless, of the five hundred and ninety-four licenses to common victuallers, granted in this city in 1830, a very large propor-

tion was taken out, by the grocers and confectioners. The common victualler, as the very name, and, until 1816, as the universal usage imported, was in the habit of providing meals. Some of our grocery stores and confectioners' shops are very fancifully arranged, and present an appearance of taste and elegance; and the grateful aroma, proceeding from their various commodities, is strangely contrasted with the rank and offensive steams, arising from the subterraneous dens of the common victuallers. In front of every one of these establishments, without any distinction whatever, the law of 1816 required the business of the occupant to be set forth, "*in a conspicuous place.*" A common victualler's license was more convenient than a retailer's, as it gave power to sell drams, to be drunken up on the premises, which a retailer's license did not. But the elevation of *Common Victualler*, in a conspicuous place, over a grocer's or confectioner's tasteful establishment, was not so agreeable. As the law was their own law, they determined, that the construction should also be their own. Yet, for a breach of the third section, they were placed entirely out of the protection of law. "*No license shall protect any person in the exercise of his or her said employment, until he or she shall have complied with this provision.*" But this provision was very rarely complied with. Of course, the parties licensed were in the same situation as were those who sold liquors without a license. Did the selectmen, or the Mayor and Aldermen prosecute these offenders, who sold liquors without licenses, for such legally was the situation of these offenders? They did not. The perfection of the license depended on the performance of this condition: this condition was not performed; but no prosecutions followed. The party, interested in the profitable employment of selling rum and other liquors, under the statute of 1816, was entirely awake to its interest. No efforts were spared to facilitate the passage of this law; and a powerful combination, from the wholesale dealer down to the dirtiest drunkard in the city, were drawn together by the *commune virnulum* of interest, for the purpose of giving it a vigorous support, and a *sound and sensible* construction, "*as they understood it.*" On the other hand, the grave, the moral, the religious, the intelligent, the educated, the refined, the overwhelming mass of landholders and opulent citizens, the considerate fathers, husbands and brothers of this metropolis, to all whom it was of infinite importance to raise an

effectual barrier against the inroads of a desolating vice,—these, who were abundantly able, by well-concerted measures, to arrest its progress, remained, with a few exceptions, stupidly inactive, and apparently under the influence of a moral catalepsy. But they had not then experienced, they simply anticipated the effects of this intolerable law; which, as we have stated, is substantially re-enacted, in the present statute. They imagined, that intemperance would not have so wide a spread! They flattered themselves, that the moral sense would counteract the influence of evil! They *ensured* the election of their representatives by giving them their—very best wishes, and staying at home; while their opponents, to a man, repaired to the polls and gave their suffrages to the “*right sort of men.*” A man, who expects to live by the trade of selling rum, will act with vigor in support of such public officers, as he knows will protect him in his Christian employment. His motives are intelligible—his object is definite; a failure at the polls may be productive of his ruin. Dram-sellers, by the force of interest, become gregarious; “*similis simili gaudet*,” the importer and distiller stick to the taverner, the retailer, and the common victualler; they stick to their customers, and their customers stick to their bottles; they go to the polls as one man, and are all actuated by the *same spirit*. The good citizens act, in the great moral cause, with less concert, less zeal, less industry. The consequences of immorality are not so susceptible of prospective demonstration. The very good, expected to result from opposition to any measure, is but a vague and uncertain object of contemplation, after all. We cannot grasp it, as the dram-seller grasps the coppers from the trembling hand of a bloated customer, and put it in a till! It is not a matter of mathematical certainty. The sober citizen confides, with a leisurely confidence, that God will do that, which seemeth him best; and he himself decides to do that which seemeth likely to give him the least present inconvenience,—as the waggoner confided in Jupiter, and put not his shoulder to the wheel. Such was the relative condition of parties, in the town of Boston, when the act of 1816 became a law. We have not yet done harping upon this backsliding daughter of the legislature. The passage of this statute marks an important era in the history of legislation on this interesting subject. The *regulation* of licensed houses necessarily involves the welfare of so-

ciety in an eminent degree. All the principal acts explicitly proceed upon the single basis of the "*public good*." This old-fashioned phraseology, which had been handed down, from statute to statute, for centuries, gives place, in the act of 1816, to a more accommodating expression, the "*public convenience*." This unhappy statute of 1816 may be emphatically styled the Rum Law of the Metropolis; the Palladium of the Drunkard's Rights.

NUMBER VII.

WHEN a very wicked, or a very mischievous thing has been accomplished, by a few zealous, selfish, and indefatigable managers, in open day, and in despite of all the congregated power and wisdom of a Commonwealth, *how did they do it?* becomes an interesting question of speculative curiosity, though we may have no special interest in the agents or the act. We have already affirmed that the act of 1816 was the mercenary act of a party, rooted in nothing but selfishness, and having not the slightest relation to "*the public good*;" and that these very words, which had been the basis of all former legislation on this subject, had been removed to make way for "*the public convenience*." Although the sole object of the statute is the creation of this new and valuable minister of the *public convenience*; the common victualler turns out, in the great majority of cases, when stripped of the phylactery, which the law directed him to wear, to be nothing more than a stationary pedlar of rum and other means of inebriation. The legislature could have blown the breath of life into the body of this new creature of positive law, in one short section, or two at the farthest. After exonerating him from the burthen of providing lodgings for man, and hay and provender for horses and cattle, nothing more was necessary than to enact, that, in addition to the restriction as to the Lord's day and ten o'clock, P. M., on other days, he should be subject to the existing laws, for the regulation

of licensed houses. But here is an act of five sections of considerable length, and filling more than three pages of the statute book. In the first section, there is a provision against him, who is guilty of presumptuous sin, "*who presumes to be a confectioner*" without a license; and another against any *common victualler* or *confectioner*, who shall keep open shop and entertain on the Lord's day, or after ten, P. M., on any other day. The common course of legislation would be, first to create, and then to provide for the created being; but here the rule is reversed; for the common victualler is begotten in the second section, and provided for in the first, before it is born. But wherefore all this parade of piety—this special regard for the Lord's day? Why produce a new law expressly against confectioners? If they sold liquors, contrary to the then existing law, they were punishable, like all other persons, who sold without a license; and the law of 1816 was so much in their favor, and enlarged their limits so far beyond their utmost hopes, that, in 1830, of all the confectioners in the city, four only took out the *confectioner's* license, and the remainder figured as common victuallers. The motive for all this seeming regard for public morals is very apparent. The provision, touching confectioners, was too entirely frivolous to obtain a place even in the latitudinarian statute of March, 1832; and the other provision, respecting the Lord's day, was obviously placed in the first section of the statute, for such worthy members as read no further, and who, taking this section and the title into view, might well enough suppose the act before them to be a grave and salutary law "*for the regulation of licensed houses,*" and not a craftily devised statute for the multiplication of *licensed holes* and *hovels*. So, in relation to the concluding sections, a legislator, who would satisfy his scruples, by a slight inspection of the beginning and the end; and while the act was passing through its several readings, give his attention and his time, which are the property of the Commonwealth, to the —newspaper; such a law-maker, and the example is very far from being uncommon, would be confirmed in his favorable impressions; for here is the substance of the old laws, in regard to the powers and duties of the tything-men, at full length, re-enacted in respect to the common victualler; all which, instead of occupying a page, might have been contained in a simple enactment, as we have stated, making him liable to all the unexcepted re-

straits of the law of 1787. There is nothing more amusing than the provision, in this and other laws upon this subject, indicating the disposition of fines and penalties, to be recovered for violations of the rum laws. They remind us of those abundant preparations, commonly made by juvenile sportsmen for the game they expect to capture. How much money has the county of Suffolk received into its coffers from such a source? Bonds were taken of common victuallers, taverners, &c. with a pecuniary penalty. How many have been taken? How many of these obligations have been forfeited? How many prosecutions have been instituted? These are questions, which a citizen has a right to ask, and to which the guardians of the peace of a city should not only be able and willing, but forward, to reply. We put these questions to the public officers of the city of Boston. But, lest the good people should be obliged to wait, as long as the worshippers of Baal, for their answer, we will partially respond to them ourselves. To May, 1830, about five thousand of these bonds had been taken; and there was no evidence on record of a single penalty enforced! We have been singularly blessed in this particular. And all this is attributable to the careful scrutiny of our vigilant police! Five thousand persons licensed to sell rum—five thousand bonds, and no case of prosecution for breach of condition! The word of any dram-seller, in the city, is every whit as good as his bond. There is no other profession, in which the same averment can be made of a similar number. But these were picked men, of *sober lives and conversations!* The evidence of the fact above stated is taken from the address of the Attorney General, then the county attorney, before the Temperance Society, May 27, 1830. His words are these:—“*All persons are bound, in a pecuniary penalty, to the Commonwealth. Taverners and victuallers, among other things, to suffer no disorders nor unlawful games, and retailers not to break the laws. About five thousand of these bonds have been taken by the city authorities, but there is no single instance on record in which their penalty has ever been enforced.*” There is a *commune vinculum* among the crimes, not less than among the sciences; and one draws after it the rest. By degrees, almost imperceptible, we become tolerant of one crime after another, as they grow up among us, through the shameful neglect of the city officers to do the work for which they are paid, and put them ef-

fectually down. But the day of election—the day of account! Who will go forward in the path of his duty with a steady step and a moral courage, utterly regardless of all such mean and personal considerations? The government of a city will do wisely to think a great deal less of their own prospects at another election, and a great deal more of their solemn responsibilities to God and man.

NUMBER VIII.

IN connexion with the subject before us, it is surely the part of wisdom to compare the situation of other cities with our own, and to ask the question, whether, under the pressure of any similar evil, they have concluded to hug their fetters of shame, or break them, by a bold and vigorous effort; to suffer the cancer to extend its corroding influence into every part of the Municipal body, or, by a petty sacrifice of individual interest, to extirpate, not only the superficial branches, which carry corruption to the extremities, but the very core itself. We have shown, that the Board of Health of the city of Washington have resolved, that the sale of ardent spirit was a **NUISANCE**, and that they prohibited the sale of it, in that city, for ninety days. This step was taken upon the opinion of their power, expressed by Mr. Wirt; and, no doubt, in connection with the prevailing apprehension of cholera. The fear of death had become more oppressive, during the prevalence of that disease. After the ninety days were past, we presume the dram-sellers, more terrible, in our opinion, than all the dogs of war, that Carolina will let loose upon the Union, were suffered to spread the cause of poverty and crime, as they did before. The drunkards made up, undoubtedly, for the time they had lost; and the cholera, when it comes again, will find them ripe for the harvest. Was the sale of ardent spirit a **NUISANCE** in Washington, only because the cholera was there? Assuredly not. But the

Board of Health restricted the operation of their interdict to ninety days, to meet the views of "*a party*:" there is a dram-selling "*party*" in every city. But we have encouragement to hope, that the time may come, when such a "*party*" in the United States will be so diminished in character and power, as to render admission into the fraternity no very elevated object of human ambition; and when the presence of the cholera shall not be at all required, to establish the universal opinion, from the mouth of the Oregon to the outlets of the Kennebec, that the sale of ardent spirits is a **NUISANCE**, a nuisance, without any correlative advantage to any human being; for, if the emoluments of the traffic are collected, as we have stated, from broken hearts and broken constitutions; if they are gathered, at the cost and charge of inflicting disease, degradation, poverty, and death; those emoluments are the wages of sin. In this hope we are strengthened, by a knowledge of the fact, that about *fifteen hundred thousand* individuals, in this country alone, have already enrolled their names upon the record, as members of the "*self-styled temperance party*," on the basis of abstinence. Cholera had the effect to rouse the fears of the citizens of Washington; it elicited the *expression* of the opinion, contained in the resolve of the Board of Health, but the opinion itself existed before, supported on other well-known and sufficient grounds. Mr. Wirt, the legal adviser of the Board, had already exhibited his views upon this subject on another occasion. "I have been," says he, "for more than forty years, a close observer of life and manners, in various parts of the United States, and know not the evil, that will bear a moment's comparison with intemperance. It is no exâggeration to say, as has been often said, that this single cause has produced more vice, crime, poverty, and wretchedness, in every form, domestic and social, than all the other ills, that scourge us, combined. In truth, it is scarcely possible to meet with misery, in any shape, in this country, which will not be found, on examination, to have proceeded directly or indirectly from the excessive use of ardent spirits." Such is an extract from Mr. Wirt's communication to the Baltimore City Temperance Society.

We have exhibited some of the fruits of the law of 1816, in former years, in the City of Boston, to which city alone the statute applies. The Kalendar of the House of Correction, from De-

ember 16, 1831, to December 15, 1832, presents the following schedule of commitments.

1831.	Common Drunkards.	Whole No.
From Dec. 16, ...	8	12
1832.		
January, ...	16	32
February, ...	13	21
March, ...	19	33
April, ...	23	43
May, ...	24	35
June, ...	34	52
July, ...	59	78
August, ...	98	129
September, ...	55	70
October, ...	51	69
November, ...	45	59
To Dec. 15, ...	8	20
	453	653

The master of the House of Correction, Mr. Badlam, by whom this statement is supplied, appends to it a few remarks, which appear to us to be judicious. "*A great number,*" says he, "*have been committed as vagabonds, who might with equal propriety be called drunkards, and probably were drunk, when arrested, but being strangers, could not with propriety be called common drunkards, because their previous character was unknown. My own opinion is, that there have not been ten persons committed to the House of Correction, the past year, who are not in the habit of drinking ardent spirit to excess. It appears, that intemperance is almost the sole cause of all the commitments. Those, who are committed as pilferers, are almost all of them drunkards: they probably would not pilfer, if they could not procure rum, with the articles they have stolen.*" Such are the observations of the master of the House of Correction. It is matter of curious speculation to contemplate the kalendar, and observe, that drunkenness is in its zenith, when the dog-star rages.

The city of *steady habits* should rather lead than follow in the career of reformation. But the opportunity is lost. We have al-

ready exhibited the course pursued by the Board of Health, in the city of Washington. We have now the satisfaction to speak of the efforts, making in the state of New-York. More than one thousand societies are in operation in that State, for the suppression of intemperance. The Grand Jury, in the city of New York, are now exerting their official influence to prevent the sale of ardent spirit, and for the abolition of the license system. They have expressed their views and opinions in the following terms: "*It is intemperance, that we regard as the great fountain, that feeds crime, and extends all other influences in fitting men for deeds of violence. We have traced nearly every assault and battery to the influence of ardent spirits. The same individuals, when sober, were quiet and peaceable, but when under the influence of strong drink, they were guilty of the grossest crimes. In one case, of the kind alluded to, ending with the loss of life, all that were concerned in the affray, were intoxicated. In another instance, a wife, having six children, which she supports with the labor of her own hands, complained of her husband's beating and abusing her, to such a degree, (when he was intoxicated,) that her life was endangered. When sober, he was kind, and did something towards the support of his family; but unfortunately this was seldom the case. Another case, traceable to the same source, was an aged and respectable lady, run down, in one of our public streets, by a vehicle, driven at a furious rate; and the conduct of the individual, who was the cause of all the injury, immediately after the accident, shows how completely this vice extinguishes every moral feeling. It is also the opinion of the Grand Jury, that the vice of gambling is greatly aggravated by the free and gratuitous use of ardent spirits in some of those establishments, which are kept for the purpose of alluring our youth, depriving them at once of their money, reason and reputation; the former not unfrequently acquired by improper means. The Grand Jury have come to the deliberate opinion, after mature deliberation, that if this source of crime and misery were at an end, three quarters of the crime, and pauperism of the city would be prevented, together with an incalculable amount of misery, which does not come under the cognizance of the law. The Grand Jury are aware, that this desirable result of banishing ardent spirits from the community, as a common drink, which is the only effectual remedy,*

for the evil complained of, is not to be effected, but through the triumph of an enlightened public opinion, and when once the civil magistrates have that on their side, they can make the law reach any evil, however inveterate: and it is our solemn impression, that the time has now arrived, when our public authorities should no longer sanction the evil complained of, by granting licenses for the purpose of vending ardent spirits; thereby legalizing a traffic at the expense of our moral, intellectual and physical power. Should the system of granting licenses be abolished, it is believed it would greatly hasten the period, when the traffic in the article would be abandoned by every citizen who has a character to sustain, and none but the worthless and abandoned would be found engaged in this business; and they (when unsupported by a more respectable class of citizens) would be compelled, by the moral power of the law, to desist, whenever the community wills it. When this desirable result shall be accomplished, and ardent spirits be driven by common consent from amongst us, the saving to the city will be very great, in the valuable time of jurors and witnesses, in attending courts, provided for the wants of the poor, together with a vast amount of a more private nature." We recommend this high moral precedent to the Grand Jurors throughout the commonwealth, and especially of the county of Suffolk. We proceed to an examination of the statute of March, 1832, and if there are any members of the legislature, who never read the statute, and we most charitably trust there are, we entreat them to peruse it with us, section by section, as we exhibit it before them.

NUMBER IX.

IN the first section of the law of March, 1832, entitled "*An act for the due regulation of licensed houses,*" it is enacted "*that no person shall presume to be an innholder or seller of wine, brandy,*

rum, or any other spirituous liquors, to be used or consumed, in or about his or her premises, except such person be first duly licensed, according to law, as is hereinafter provided, on pain of forfeiting the sum of one hundred dollars; and if any person shall, at any time, sell any spirituous liquors, or any mixed liquors, part of which is spirituous, to be used or drunk in or about his or her premises, without license therefor, duly had or obtained according to law, he or she shall forfeit and pay, for each offence, a sum not exceeding twenty dollars, nor less than ten dollars." There is nothing better, in the whole statute, than the very first section; and it was discreet, in the getter up of this extraordinary act, to put the matter of the first section in a conspicuous place, as a favorable sample of the whole. The penalties, in this section, are reasonable penalties. The first corresponding penalty, in the law of 1787, was twenty pounds, and the second not more than six pounds, nor less than forty shillings. We have already exhibited the opinion of the present Attorney General of the Commonwealth—that in 1830, and, of course, under the operation of the law of 1787—it was fair to infer, that there were three hundred persons habitually selling spirituous liquor without a license in the city. There are no new preventive terrors in the present law, and, we have no doubt, the number is as great, and probably greater, than in 1830. The first section has the negative merit of not perverting the law, as it existed before, to unworthy purposes: thus far, it has not taken off the salutary restrictions of former legislation; and such is its highest praise: of course, it adds nothing to the force of the corresponding section, in the law of 1787.

The second section enacts, "*That no person shall presume to be a retailer, or seller of wine, brandy, rum, gin, whiskey, or other distilled spirits, in a less quantity than ten gallons, and that delivered and carried away all at one time, except that person be first duly licensed according to law, as is herein provided,—on pain of forfeiting the sum of twenty dollars for each offence; and no person, licensed to be a retailer, as aforesaid, shall presume to sell any of the above liquors, either mixed or unmixed, to be drunk in his or her house or shop, or in any of the parts or dependencies of the same, under pain of forfeiting therefor the sum of twenty dollars."* Here we have, substantially, the provision of 1787, but with a most material variation. By the law of 1832, no smaller

quantity can be sold than *ten gallons*, without a license. By the law of 1787, no smaller quantity could be sold than *twenty-eight gallons*, without a license. Here is an important alteration. The motive for this extraordinary change is itself an irresistible inference from its palpable effects. The statute, in this particular, appears to have been accommodated to the size of the ten gallon keg. There were undoubtedly many, who were altogether unwilling to be seen visiting the tippling shop, and who did not feel rich enough to purchase *twenty-eight gallons of New England rum* at one time; and to whom *ten gallons* would not come amiss, at the wholesale price, and received from the wholesale dealer, in part payment for work. One thing is manifest, that, before March, 1832, all persons, selling distilled liquors in less quantities than twenty-eight gallons, without a license, were punishable by fine; but, under the present law, no person is punishable for selling any quantity not less than ten gallons, without a license. Instead of "*An act for the due regulation of Licensed Houses*," this act appears, in contemplation of the section before us, to be *An act for the more speedy and universal diffusion of rum throughout the Commonwealth*. Here again we have the "*public convenience*" substituted for the "*public good*." We inquire of all reasonable men, why should the facilities for the dispersion of ardent spirit be multiplied? The effect of this law is obviously to convert every wholesale dealer into a retailer, for every customer, who calls for any quantity, from ten to eight and twenty gallons; and it takes away the necessity of a license in every such case. In other words, it enables the wholesale dealer to vend a quantity, which would not more than supply the requirements of an Irish wake. In 1680, the smallest quantity, which the law permitted to be sold without a license, was *a quarter cask*; in 1787, it was *twenty-eight gallons*; and, in 1832, it is *ten gallons*.

The second section of the act of 1787, required the party licensed to take the following oath:—"I, A. B., do swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and that I will, to the utmost of my power, defend the constitution and government thereof, against traitorous conspiracies, and all hostile and violent attempts whatsoever." The act of 1832 requires no oath of allegiance. A custom-house oath has been proverbially said to ascend no higher than the cross-trees;

how high a dram-seller's oath will go can never be tried under the statute of 1832; and all preceding laws upon this subject are repealed, by the last section of this act. It was required, by the act of 1787, that every person licensed should recognize with two sureties, and the condition of the recognizance is set forth, in form, in the tenth section of that act. It has always been the practice, until March, 1832, to take these recognizances. About five thousand, as we have stated, have been taken by the City Government, to 1830, and no record exists, says the Attorney General, of any penalty enforced. Yet the act of 1832, not only makes no provision for recognizance, directly or by implication, but we are not able to find therein the slightest allusion to the subject. As the entire act of 1787, and its additional acts, and all former laws on the same subject are repealed; this act of 1832 is the whole law. Recognizance, in the present case, grew not up in practice, but was the creature of positive law. The practice under the old law, which was in force until March, 1832, must have perished with the laws, which gave it birth, that is, by force of the repealing section; and, of course, there is no power, vested in the Mayor and Aldermen of the city, nor in the county commissioners throughout the Commonwealth, to demand recognizances of individuals under this act, for the due regulation of licensed houses. The legislature was, no doubt, entirely satisfied of the fact, suggested by us in a former number, that a dram-seller's word was every whit as good as his bond. We scarcely enter upon the borders of this important statute, before we discover three extraordinary instances of innovation: the change of limitation from twenty-eight gallons to ten; the omission to require an oath of allegiance; and the omission to require a recognizance! Can it be possible, that the good people of the Commonwealth are aware of these extravagant changes in the law? We are confident they are not. Aliens were, for more than two hundred years, and until March, 1832, scrupulously excluded from this employment. They are placed, by the statute of 1832, in this respect, on the same footing with citizens. No recognizances are now required, by law, of persons licensed in the Commonwealth; none are taken in the city; and, although demanded, as we have good reason to believe, in several towns, they are so demanded under an entire misapprehension of the law. What reason can be given

for such a departure from all former legislation? The penalties of such recognizances were seldom enforced! A sound and sensible provision is therefore abolished, because there is not enough of moral sense in the community to demand its execution! The abolition of recognizances was an act of complaisance to the dram-selling party at large, and the omission to require the oath of allegiance was intended to propitiate the foreign department.

NUMBER X.

IN the third section of the act of March, 1832, it is enacted, "*that no person shall presume to be a common victualler, or seller of wine, brandy, rum, or any other spirituous liquors, to be used and consumed in or about his or her premises, except such person be first duly licensed, according to law, as is herein provided, on pain of forfeiting the sum of one hundred dollars: and if any person shall at any time sell any spirituous liquors, to be used or drunk in or about his or her premises, without license therefor, duly had and obtained according to law, he or she shall forfeit and pay, for each offence, a sum not exceeding twenty dollars, nor less than ten dollars.*" In the three first sections, we have, therefore, penal provisions against all persons presuming to be *innholders, retailers, and common victuallers*; the legislature, of course, contemplating a division of these engineers of moral and physical destruction into three classes, agreeably to the act of 1816. The *common victualler* is created anew in the fourth section, in which it is enacted, "*that the Mayor and Aldermen of the city of Boston may license, for said city, as many applicants therein, as common victuallers, as they shall decide the public good may require; and to remove all doubt of the nature of the occupation of a common victualler, provided to be licensed in this act, it is hereby provided, that all the liabilities, privileges, and requirements of this act, which apply to innholders, shall apply to common victuallers,*

excepting that they shall not be required to furnish lodging for travellers, hay and provender for horses and cattle." The question arises at once, if *the public good* really requires, that any such agents should be legally appointed and empowered in its behalf, as *common victuallers*, which, translated from the shibboleth of the statute into plain English, means *rum-pedlars* or *drunkard-makers*, why is the blessing confined to the city? Why should it not be extended to Salem, to Worcester, and other populous towns of the Commonwealth? "*The public good*" is of as much importance there, as in the metropolis; and if, even in 1830, nearly six hundred persons were licensed in the city, as *common victuallers* (and such was the fact), and this because the Mayor and Aldermen decided, that, in addition to the retailers, innholders, the notorious phalanx of unlicensed venders, and the genteel and vulgar distributors of spirituous liquors for nothing, *the public good required* such a corps of supernumeraries; if such were the case, nothing but a selfish spirit can lead us to withhold the blessed product of such legislation from our fellow-citizens of other municipalities. The law of 1816, the great and little dram-seller's charter, was enacted for Boston, as a *town*; and required the selectmen to certify to the Court of Sessions, from time to time, *what number* of common victuallers they judged necessary for the "*public convenience*." Under the present form of government no such provision can apply to the city; and the present law, which repeals all other laws on the same subject, and of course the law of 1816, leaves the matter of license with the Mayor and Aldermen alone. The *whole power* is with them, and with them is the *whole responsibility*. Will the Mayor and Aldermen of the city of Boston undertake to "*decide*" that the "*public good requires*" six hundred licensed *common victuallers*, in the city, in addition to all other licensed and unlicensed promoters of drunkenness? Assuredly not. But the licenses are granted; and they will continue to be granted, until the re-election of a Mayor and Aldermen is made no longer to depend upon the exertions of men, who have their own selfish ends, and not the real welfare of the community, at heart. Wretchedly contrived as the statute appears to be, independent and honest officers can find, in the fourth section, no want of discretionary powers. They can refuse as many applicants, *as they dare to refuse*. It is their plain, palpable duty to "*decide*" what

number of licensed houses "*the public good requires,*" and not to license seven hundred, because they have licensed one hundred. The fourth section, recited above, enacts, "*that all the liabilities, privileges, and requirements of this act, which apply to innholders, shall apply to common victuallers, excepting that they shall not be required to furnish lodging for travellers, hay and provender for horses and cattle.*" It is a grievous thing, that legislators should not be able to know their own minds for two sections together; this section, the fourth, is partially repealed in the fifth, which enacts, "*that if any person licensed as a common victualler, as described in the preceding section of this act, shall keep open his or her house, cellar, shop, store, or place of business, on any part of the Lord's day or evening, or keep open the same at a later hour than ten of the clock, of the evening of any working day, and entertain any person, by selling him or her any spirituous or strong liquor, on the Lord's day, or evening, or any working day, at a later hour than ten of the clock in the evening thereof, he or she, so offending, shall forfeit and pay, for each offence, on conviction thereof, the sum of ten dollars ;*" so that all the *privileges* which, in the classical phraseology of the statute, *apply* to innholders, with the exception of furnishing lodging for travellers, and hay and provender for horses, do *not* apply, notwithstanding the fourth section enacts, that they shall apply, to common victuallers; for, among the privileges of innholders, are those of keeping open on the Sabbath day, and after ten of the clock on all days of the week. It will be seen, that, by the tenth section, innholders are required, not only to furnish lodgings, but suitable provisions for travellers and stable room, as well as hay and provender, for horses and cattle. *Common victuallers*, as the law stands, are, therefore, equally bound to furnish stable room for horses and cattle, and suitable provisions for travellers; for such are among the liabilities which apply to innholders, and from which common victuallers are not relieved by the exception. Absurd as it may appear, and inconvenient as it might prove to the proprietor of a first rate grocery, who has the common victualler's license, to be "*at all times furnished*" with suitable provisions for travellers, and stable room for horses and cattle; there is no escaping from this requirement of positive law. Of course, such a construction was never intended; but, like the statute of the Commonwealth, to

which we have already referred, which provides a penalty for those who offer for sale any *lighted* squib, cracker, or rocket, there it is—any judge may explain, but no judge can contradict it. *With stable room for horses and cattle and suitable provisions for travellers*, common victuallers are required always to be furnished, on pain of losing their licenses. But they have no occasion to fear; the Mayor and Aldermen will give them as little trouble as possible. This is the act of the legislature, that is, the statute is passed by them, as a counterfeit bill is occasionally passed by a well-intending citizen, who means no harm, but is not particularly mindful of what he is about. But what man could have produced such an ill-digested farrago, as the license law of March, 1832? If the finger of any dram-seller was in this blessed work, the whole brotherhood may well exclaim, “Heaven defend us from our friends!” It would be well, if shameful ignorance were the only offence chargeable against the individual, who has presumed to make laws without knowledge, which is rather more of a presumptuous sin than mixing liquors without a license. When we come to the examination of the twelfth section, providing for the case of minors and servants, we shall not be able to find an excuse for the unfortunate journeymen, who prepared the statute, in any supposable ignorance or oversight. If the twelfth section of this unwholesome statute be not a wicked and unprincipled departure from the law, as it has stood for ages, in respect to those classes which have been most properly the special objects of legislative protection and regard,—we know not wherein wickedness may be said to consist. If we were disposed to let our imagination loose in the field before us, we should fancy the license law of 1832 to be the work of some cunning graduate of the dram-selling party, whose grain of talent had been hammered out, on the gold-beater’s anvil, to a considerable surface of cunning; whose experience had taught him precisely where the shoe pinched upon the dram-seller’s foot; and who had contrived a law to meet the views and wishes of the party, without the least consideration for the peace and welfare of the community; with a settled purpose to break down all the important restraints upon a dangerous occupation; and thinking of nothing, and caring for nothing, but the all-absorbing object of the party, *how much money can we make by the traffic in RUM!*

NUMBER XI.

IN 1698, the tenth year of William III, it was deemed expedient, as a very salutary restraint upon intemperance, to regulate even the *location* of public houses. It was very desirable, of course, that they should be so placed, as to be readily found by travellers; but of far greater importance, that they should not be located in hidden corners, and holes of the earth, whither the drunkard might crawl, like a reptile, and pass his hours, without any danger of encountering the frowns of his fellow-man. The province law of that year accordingly enacts, that "*all public houses shall be near the high streets, roads, and places of great resort.*" The common victualler of 1816 entered not into the conceptions of the good people of the province, in 1698. If such a legalized minister of misery had then existed, *a fortiori* the requirement would have been applied to him. After eighty-nine years' experience, the legislature of Massachusetts, legislating anew upon this important subject, re-enacted this very provision, in 1787, and it continued to be the law until March, 1832. Then, together with the ancient limitation to twenty-eight gallons, and the oath of allegiance, and the innholder's, retailer's, and victualler's recognizance, it was thrown entirely aside. It is altogether omitted in the act of 1832. Surely, this is not in the spirit of a sound and careful legislation. It may not be fashionable, at present, for a public officer, who calls down Almighty God to witness the solemnity of that oath, by which he promises faithfully to execute the laws—we are aware that it is not popular for such an officer to do his duty, in the simple, and common sense interpretation of that word. Why not, therefore, for the sake of consistency, throw these oaths, with the mass of other rejected matters, into "the receptacle of things lost upon earth?" The time, however, may come, when it may be more in fashion than at present, to execute sound and sensible laws, for the suppression of intemperance. Is it not, therefore, to be regretted, that wise and prudent provisions, which have lasted for ages, should be thus mercilessly destroyed, to give place to an impotent, and worse than im-

potent, to a wicked and unprincipled law? The sixth section of the act of March, 1832, enacts, "*That the Mayor and Aldermen of the city of Boston may license for said city of Boston; and the county commissioners, in the several counties in this Commonwealth, may license for the towns and district, in their respective counties, as many applicants therein as innholders or retailers, as they shall decide the public good may require; and in all licenses, to be granted either to innholders, common victuallers, or retailers, within the city of Boston, or in the towns or districts in this Commonwealth, the street, lane, alley, or other place, and the number of the building, or some other particular description thereof, within said city, town or district, shall be specified, where such licensed person shall carry on his or her respective employment, and said license shall not protect such person from the liabilities provided in this act, for carrying on and exercising his or her employment, in any other place, than in that specified in said license.*" In this section there is a reference to the street, lane, alley, or other place, in which innholders, common victuallers, and retailers may practise their employment. For "*places of great resort,*" the last words in the corresponding provision of the statute repealed, we have "*lane, alley, or other place.*" How admirably this strangely altered phraseology is adapted to the kennels and holes, in various portions of the city! It would almost induce one to believe, that the rum-dealers themselves had turned legislators, and framed their own laws. The seventh section enacts, "*that all licenses to innholders, retailers, and common victuallers shall be yearly granted or renewed, and the term, for which all such licenses shall be granted or renewed, shall expire on the first day of April in each year; but it shall be in the power of the Mayor and Aldermen of the city of Boston, and the county commissioners, in their several counties, to grant or renew licenses, at any time after the said first day of April, for the remainder of the year, whenever they shall deem the same expedient. And each person, who shall be licensed, as aforesaid, shall pay to the Clerk of the city of Boston, or to the Clerk of the County Commissioners of their respective counties, the sum of one dollar, which shall be paid by said Clerks, to the Treasurers of their respective counties, for the use and benefit of said counties.*" The first words of the section give us the old law—all licenses shall be yearly granted or re-

newed—but, the Mayor and Aldermen, and county commissioners, may grant and renew them, whenever they see fit. The law is therefore entirely in the hands of the Mayor and Aldermen, and County Commissioners. In the law of 1787, repealed by the act of 1832, the time for granting licenses was “*the first General Sessions of the Peace, next after the last Tuesday of June, annually,*” with exceptions for those, who satisfied the Court that they “*were unavoidably prevented from making application, at the said first General Sessions of the Peace, or that the necessity of such license had taken place since that time; and, in either case, that the public good makes it necessary that the same should be granted.*” Mark the difference: the exceptions, in the law of 1787, are defined; the applicants out, of course must show that they were unavoidably prevented from applying before, or that the necessity has subsequently arisen; and, in either case, they are bound to show, that the *public good* makes it necessary. In the act of 1832, nothing more is required, than that the Mayor and Aldermen and County Commissioners should deem it expedient! The reasons for such *deeming* may be occult, hidden in the deep recesses of wisdom, and utterly unintelligible to every sober citizen! No man can bring these public officers to an issue of reason, on either ground of exception, under the abrogated law; for, though the license may not be required by any pressing necessity, nor by a consideration for the public good, it may be *expedient*, in the opinion of the Mayor and Aldermen, or county commissioners, to gratify three of their constituents, by one single act—the retail dram-seller, of course; the wholesale dram-seller, who recommends him; and the owner of the shop! But what is the fee? **ONE DOLLAR!** By the additional act of February, 1820, in addition to the fees then paid, *four dollars* were required to be paid to the Treasurer of the Commonwealth, by every retailer, victualler, and confectioner. This law is also repealed, by the act of 1832, and a requirement of **ONE DOLLAR** substituted in its place. But the statute is replete with tender mercies towards the dram-selling party, although these tender mercies are terrible cruelties to thousands beside. There may be some, who can hire a hole in the earth, and get trusted for a few gallons of rum, but the dollar is an insurmountable objection! Here is an occasion for the bowels of the legislature to yearn towards the very humblest of its devoted

missionaries, employed in spreading, far and wide, the blessed spirit of *New England*. The legislator, the procreator and patron of this abomination is not regardless of this touching appeal, and enacts, in the eighth section, "*That the Mayor and Aldermen, of the city of Boston, may license for the city of Boston, and the County Commissioners, in the several counties, may license for the towns and districts in their respective counties, in the manner before provided, as many persons therein as they shall decide the public good shall require, as innholders, common victuallers, or retailers, or sellers of wine, beer, ale, cider, or any other fermented liquor, and no excise or fee shall be required therefor.*" Is it wonderful that the dram-sellers of Massachusetts should have become a numerous and powerful army? Their accoutrements cost but little: how liberally the bounty of the legislature is accorded to every new recruit! Here, in sad and sober earnest, we have a standing army, with more than all its ordinary horrors, called into action and supported by the State, and whose power has already been as effectually exerted, for the election and deposition of public officers, as was the power of the Janissaries in Constantinople. *The Janissaries are no more!* May we not hope and trust, that the uncompromising spirit of our pilgrim fathers, reviving, and uniting its influence with the exertions of the self-styled temperance party, will, at no very distant day, enable us to say, *the dram-sellers are no more!*

We have arrived at the ninth section, or the middle of the drunkard's law. Let us briefly recapitulate:—1. The limit cut down to ten gallons from twenty-eight. 2. A new species of common victualler created, obliged to furnish stable room for horses and cattle, and suitable provisions for travellers, but neither hay, provender, nor lodgings! 3. An abolition of the oath of allegiance, which has been a *sine qua non* for hundreds of years, and the consequent admission of aliens, as capable of being licensed. 4. The omission to require any bonds, or recognizances of persons licensed to sell ardent spirits; thus changing the law, as it has existed for several generations, in a most important particular. 5. The substitution of "*street, lane, alley, or other place,*" for "*high streets, and places of great public resort,*" in regard to the location of public houses. 6. Licenses, not granted, as of old, annually, with two special exceptions; but whenever the Mayor and Aldermen and

the County Commissioners shall deem it expedient! 7. Instead of four dollars, in addition to the usual fees, the Mayor and Aldermen and the County Commissioners are never to require more than ONE DOLLAR, and to license for nothing, if they see fit. What equivalent have we thus far, for all this ridiculous confusion, on the one hand, and for all this unsparing destruction of so many sound and judicious provisions of the law of 1787, on the other? Nothing. It is deeply to be deplored, that the statute book of the Commonwealth should have been disgraced by this unwholesome law, bearing a title to which it is not entitled—"An act for the due regulation of licensed houses."

NUMBER XII.

THE ninth section of the act of March has no relation to the city. The clerks of the County Commissioners, in the several counties, are required annually to transmit to the selectmen of the several towns lists of the persons, licensed the year before; and no person shall be licensed, who does not produce a certificate from the selectmen of the town, setting forth, that, after "*mature consideration*," they are of opinion that "*the public convenience requires that the petition be granted*." But, if the selectmen refuse or neglect, the County Commissioners have appellate and final jurisdiction of the dram-seller's complaint. The tenth section requires innholders to be furnished with suitable provisions and lodging, stable room, hay, and provender. It also requires, that every licensed *innholder* and *common victualler* shall "*have a board or sign, affixed to his or her house, shop, cellar or store, or in some conspicuous place, with his or her name at large thereon, and the employment for which he or she is licensed*." To this regulation very little attention is paid. The keepers of dram-shops, who have not complied with this requirement, have been brought before the court, for keeping open on the Sabbath day, on the supposition that

they were *common victuallers*; a supposition grounded on the palpable impossibility of finding accommodations for travellers and their horses and cattle, in a grog-shop ten feet square. Yet these offenders have escaped, upon the exhibition of licenses as *innholders*. Within a few days, two gentlemen of the first respectability have related to us similar results, occurring to themselves, as complainants. All this might have been prevented, by the attention of a vigilant police, and an enforcement of the law, for the respective designation of the innholder and the common victualler. A vigilant police!—Can any citizen, familiar with the city, forbear to smile, when he reads the eleventh section of this invaluable statute? It enacts, much after the manner of former acts, “*that no innholder and no common victualler shall have or keep in or about his or her house, shop, cellar, or store, yards, gardens, or dependencies, any dice, cards, bowls, billiards, quoits, or any other implements used in gaming; nor shall suffer any person or persons, resorting unto his or her house, or other place of business, to use or exercise any of said games, or any other unlawful game or sport, within his or her house or place of business, or any of the dependencies as aforesaid, or places to them belonging, on pain of forfeiting the sum of ten dollars for every such offence. And every person, convicted of using and exercising any of the games as aforesaid, in any house, place of business, or dependencies thereof, shall forfeit the sum of ten dollars.*” May there not have been some mistake in engrossing this section of the law? May it not have been intended to enact, that innholders and common victuallers *shall* keep the implements, used in gaming, in and about their premises? May it not have been intended to comprehend these very matters under the general term, *suitable provisions*? Now and then, some miserable victim is dragged before the court, for breach of this part of the statute. If it were not for this, the prosecuting officers would be entirely out of practice. If implements for gaming were not to be found in such establishments, we should not receive the visits of certain *chevaliers d’industrie*, who are in this part of their orbit, especially in the summer months. The faces of some of these interesting personages are very familiar to our citizens. A brace of these black-legs, in general appearance, dress, and equipage, nearly resembling each other, taking a northwardly course over Washington

street, in the morning, and a southwardly course in the afternoon, between two notorious establishments, each with his gig-sulkey, and brown pony, which had been deprived of those appendages of the head, still undeservedly retained by its proprietor, these fellows were seen, as regularly trotting along, one in the trail of the other, for several summers past, as though they were paid salaries for their services. We can find a sensible reason for permitting such an antiquated provision to remain in the act of 1832,—it did not directly interfere with the sale of rum; and it might serve to atone, in some degree, for the faults and follies of the law. At any rate, it could offend nobody, for its execution was not to be expected: when the oath is taken to do one's duty in a public office, long established custom has authorized a mental reservation, as to this and other small matters, whose enforcement may not be agreeable to the wishes of our constituents.

NUMBER XIII.

A MORE extraordinary spectacle cannot easily be imagined, than the young men of a community protecting themselves against the evils of intemperance, by the formation of temperance societies, on the one hand, and the legislature of the commonwealth, of which they are members, enacting laws for their destruction, on the other. That such a spectacle should really be presented may appear exceedingly improbable, and yet it is absolutely true. The legislature of the commonwealth of Massachusetts, in the twelfth section of the act of March, 1832, has entirely changed the legislation of centuries, in regard to those classes of society, which are, from their youth, inexperience, and relative condition, most in danger from the allurements to intemperance. We earnestly solicit the attention of every parent, master and guardian, to the law, as it was, and as it is. Without anticipating their sentiments, by any further remark, we give them the law of 1787, which has been the law of this commonwealth for ages, and the

law of 1832, by which the law of 1787 is repealed. We call their particular notice to the words in capitals, and to the obvious effect of those words. The statute of 1787 enacts, "*That no taverner, innholder, or victualler shall suffer any person to drink to drunkenness or excess, in his or her house, or suffer any minor (travellers excepted), or servant, to sit drinking there, or to have any strong drink there, WITHOUT SPECIAL ALLOWANCE of their respective parents, guardians, or masters.*" The statute of 1832 enacts, "*That no innholder, and no common victualler, shall suffer any person to drink to drunkenness, or excess, in his or her house, or place of business; or suffer any minor (travellers excepted), or servant to drink there, or to have any strong drink there, AFTER HAVING BEEN FORBIDDEN by their respective parents, guardians, or masters.*"

Can it be supposed, for an instant, that the good people of Massachusetts approve of this important alteration in the law? How few, in all probability, know any thing about it! How many, to a perfect certainty, care nothing about it! Until March, 1832, dram-sellers were, in some measure, restrained from selling ardent spirits to minors and servants, by the very notorious existence of a law, requiring them never so to do, without the special allowance of the parent, master, or guardian. But the gross avarice of the dram-selling party has prevented them from leaving a remnant of the statute of 1787, which might interfere with their gainful employment. The dram-seller may now, without any fear of legal consequences, minister to the ruin of the improvident servant, or the beardless boy,—unless he is forbidden by the parent, master, or guardian. And how is *he* to be forbidden? *The seven-hundred-headed monster of the city of Boston!* The parent will hardly be willing to resort to the public newspaper, and convey, in the very fact of the prohibition, the notoriety of his domestic affliction, and the infamy of his child. And, if he adopt such a course, it may fail him after all, unless he can shew a privacy of such notice, on the dramseller's part. This very notoriety would also be widely spread, if he should prefer the course of personal application to every drunkard-maker, in all the streets, lanes, alleys and other places of the city; and, before he had arrived at the end of his labors, in one direction, other licentiates would have sprung up in another; so that his toil might be una-

vailing, after all. Where was the legislature, when the dram-selling party took possession of the hall, and enacted this cruel and mercenary law? The framer of this section cannot, for a moment, be supposed to have produced this extraordinary change by accident. The phraseology of the old and new sections is nearly the same; and the important words, constituting the difference, are evidently introduced with care. The individual, who effected this alteration of the law, effected it, of course, with a deliberate design; not a deliberate design to produce all the misery, which it is calculated to produce, and which it undoubtedly has produced; but a deliberate design to facilitate the arduous labors of the rum-sellers, at any hazard of the reputation, health, and happiness of his fellow-beings. Can it be possible, that such a man is himself a father? If so, we ask him, and it is the only favor we have to ask of such a man—to suspend his worthy operations, for a very brief space, and go with us to the dwelling of some unhappy man, whose domestic peace has been murdered by the instrumentality of some one or other of these emissaries of destruction. He had, perhaps, an only son, upon whom he had hoped, in his old age, to repose the cares and burthens of life. He had reared him with a father's care. His education had been the object of his solicitude for years. He had almost attained the age of manhood, and was, ere long, to be ushered into the busy walks of life with the fairest prospects of usefulness and honor. But, alas! that cloud of care and abstraction, upon the brow of one so young, and so little involved in the perplexities of the world; that apparent desire to avoid the society of a devoted father, who, until of late, had been the object of affectionate respect, are surely the harbingers of ill. The anxious father awaits the return of his deluded boy. The heavy and unsteady step denotes his approach at the midnight hour. He comes! A look of mingling shame and defiance upon his altered brow! Instead of the filial "good night," he scarcely bestows a passing proof of recognition on his bewildered parent, as he ascends to his chamber. The father lingers, until slumber has locked up the remaining senses of his child. He then creeps to his apartment—he approaches the bed—it may not be thus—the precept, the example of years cannot have been crowned with this miserable result—he leans over his unhappy child, and, in the vile tainted breath, realizes all that

he would not find—the ruin of his hopes, the destruction of his only son ! It is most natural that he should endeavor to discover the author of his misery, with a design to inflict such punishment as the law has prescribed. He seizes the first occasion, and follows the steps of the wretched victim through the mazes of the city, to the door of the dram-seller, in some distant corner. Possessed of sufficient evidence, he instantly applies to the attorney of the county ; and from him he learns, that his case is not susceptible of any remedy, *since he had never forbidden the dram-seller to minister to the destruction of his child, and the overthrow of his own earthly happiness !* Is the legislature of the Commonwealth in session, and is such an abominable law permitted to continue ? There is an apathy, on this highly interesting subject, which is absolutely cataleptic. There is no man, however, in this community, in any condition of life, which puts him beyond the reach of this common curse, this awful domestic calamity. For there lives not a man, although he may be exempted from the scourge in his own household, who can deny, that, among his collateral relations or connexions, there may not be found a DRUNKARD.

NUMBER XIV.

THE thirteenth section of the act of March, 1832, enacts, “ *that if any innholder or common victualler shall trust, or give credit, from time to time, to any person for liquor, to be drunk and used, in his or her premises, such innholder, or common victualler, shall lose and forfeit all such sums, so trusted and credited, &c.*” The eighteenth section of the law of 1787, enacts substantially the same thing, but applies also to retailers, and does not limit the operation of the law to cases of liquor to be drunk and used in the premises of the seller. Here then is another example of legislative complaisance to the dram-selling party. The retailer may now maintain his action in all cases, where he has

trusted the dram-drinker ; and so may the victualler and innholder, when the liquor is drunken outside the shop door. But let us go on, as fast as we can, to the end of this extraordinary law. The fourteenth section corresponds, in all important respects, with the seventeenth of the act of 1787. It requires the clerk of the city, under the direction of the Mayor and Aldermen, and the selectmen of towns, in writing under their hands, to forbid licensed persons from selling spirituous or strong liquors to the description of individuals, set forth in the statute. The fifteenth section prescribes the form of action for penalties ; the application of those penalties ; and the alternative of imprisonment, in case of inability to pay. The record of offenders, under the fourteenth section, whom the dram-sellers have been forbidden to indulge, by the city clerk, under the direction of the Mayor and Aldermen, would be well worth the inspection of the curious ; and the penalties, recovered throughout the Commonwealth, for breaches of this act, have no doubt been safely invested, without the necessity of appointing special committees for that object. The sixteenth section repeals the law of 1787, and all former laws on that subject. In this act, the dram-seller and the drunkard have the chart for their profitable voyage ; and, as the compass is set by the legislature, they are in no imminent danger of missing their way. By the sixteenth section of the act of 1787, the selectmen of towns were required to post up "*in the houses and shops of all taverners, innholders and retailers, a list of the names of all persons, reputed common drunkards, or common tipplers, or common gamesters, mispending their time and estate in such houses.*" This provision is altogether omitted, in the act of 1832. Undoubtedly, its enforcement would be exceedingly burthensome and disagreeable to all parties. The mere labor would be enormous of posting up these names, in seven hundred licensed houses in the city of Boston, correcting them from day to day, and noting the *stelligeri*, or dead drunkards, as they occasionally drop off, one after another, from week to week. We have shown, by the certificate of Mr. Badlam, that, in a single year, ending Dec. 15, 1832, four hundred and fifty-three common drunkards were committed to the House of Correction ; add to these the common tipplers and common gamesters, and what an enormous catalogue should we have to post up, in obedience to the law, which has been so recently repealed. Not a few of the com-

mon tipplers are members of very respectable professions ; and, as the tendency of this act of the legislature is to patronize the sale of rum, to remove the scruples and allay the fears of every citizen, who has a bias towards intemperance, and to facilitate the progress of drunkenness throughout the Commonwealth, it was perfectly consistent to omit such a troublesome provision. It was omitted, in the same spirit, which taught the framer to pass by the nineteenth section also of the act of 1787, which directs tything, men “ *to inspect all licensed houses, and to inform of all disorders and misdemeanors, which they shall discover, or know to be committed in them.*”

We have now finished our examination of the act of March, 1832, entitled “ *An act for the due regulation of licensed houses.*” In this examination, we have been actuated, by no other motive than a desire to promote the public good. We believe, more firmly than at the outset, that the existing license law is a *wicked and unprincipled statute*. We cannot believe that there is a member of the legislature of Massachusetts, who will presume to defend it from the severest animadversion. Has it not destroyed several, among the most wholesome provisions of the act of 1787 ? Does it not establish principles subversive of the peace and order of society ? Are not the whole text and context of this act, its very tenor and phraseology demonstrative of the truth, that it was prepared by some person, intimately connected with the dram-selling party, and deeply interested in the traffic in rum ? Can any Christian, or any moral man, hesitate, for a moment, to pronounce that section, which removes the safeguard, provided by the law of 1787, for minors and servants, a *cruel and inhuman* provision ? Is there any subject of deeper interest, at the present moment, upon earth, or more immediately connected with our happiness, in a present and future state, than the subject of temperance ? We have no utopian fancies upon this interesting theme. It has never entered into our highest and holiest hopes, that universal temperance was to be achieved by legislation.

But it requires no wizzard to foretel, that intemperance is not likely to relax its fatal hold upon the people, while it may securely count upon the patronage of the Senate and House of Representatives of the Commonwealth. This glorious result, the removal of that terrible scourge, which is hurrying its thousands

annually from the earth, can only be expected through an entire regeneration of public opinion. This desirable event, if we do not strangely mistake the signs of the times, is already under the process of gradual evolution. We have only to travel back a very short space, in the path of time, some very few years, to recal the full measure of all that derision and contempt, showered down upon the earlier combinations for the suppression of intemperance. The drunkard jocularly drank success to their efforts. The dram-seller chuckled over their impotent exertions, as he put the wages of iniquity into his till. The man of the world, the merely indifferent spectator, smiled at the wild and romantic aspirations of the "self-styled temperance party." Even among the wise and good, there were not a few, who cherished not the slightest expectation of their success. A more remarkable progress has rarely been made in any cause, at any period, or by any body of men. In addition to a very large and highly respectable number, throughout the United States, who are entirely disposed to promote the object in hand, "fifteen hundred thousand people (says the fifth report of the American Temperance Society) now abstain from the use of ardent spirit, and from the furnishing of it for the use of others : there are more than four thousand temperance societies ; more than fifteen hundred distilleries have been stopped ; more than four thousand merchants have ceased to traffic in the poison ; four thousand five hundred drunkards have ceased to use intoxicating drinks." The efforts of these societies are unremitting. Their chief object is the illumination of the public mind, by the dispersion of circulars, public journals, and reports, and by the employment of intelligent and able missionaries. Their success, in God's good time, is no longer the problem that it was. Their numbers are constantly increasing ; while the drunkard and drunkard-maker are becoming more and more the objects of contempt and disgust.

